

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOBILEMEDIA IDEAS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 10-258-SLR
)	
APPLE INC.,)	
)	
Defendant.)	

MEMORANDUM ORDER

At Wilmington this 3rd day of December, 2012, having reviewed the evidence relevant to Apple Inc.'s ("Apple") request that MobileMedia Ideas, LLC's ("MobileMedia") expert, Dr. Sigurd Meldal, not be permitted to supplement his infringement opinion that the "Release Complete" message of the accused products constitutes the "rejection message" claimed in U.S. Patent No. 6,253,075 ("the '075 patent") (D.I. 493; D.I. 494);

IT IS ORDERED that MobileMedia is precluded from offering at trial Dr. Meldal's testimony regarding the "Release Complete" message constituting the "rejection message" claimed in the '075 patent (D.I. 493 at ex. 4, ¶ 6), for the reasons that follow:

1. Dr. Meldal never referred to the "Release Complete" message in his first expert report on infringement. (*Id.* at ex. 1) During his November 29, 2012 deposition, Dr. Meldal admits as much. (*Id.* at ex. 5, 55:2-25, 56:4-15, 89:5-14, 89:24-90:5)
2. During his April 4, 2012 deposition ("April deposition"), Dr. Meldal stated that, besides the "Disconnect" message, he "[had] not formed an opinion . . . about there being possibly other messages that are also rejection messages." (*Id.* at ex. 2, 560:19-

562:4) Although he did call the “Release Complete” message a rejection message in response to opposing counsel’s questioning, Dr. Meldal’s testimony in that regard was merely conclusory, without any reasoning. (*Id.* at 547:21-549:18) Dr. Meldal later stated that the focus of his infringement theory for the ‘075 patent prior to his April deposition was on the “Disconnect” message being the claimed rejection message. (*Id.* at ex. 5, 159:15-20)

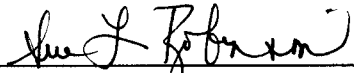
3. In addition, Dr. Meldal concedes that he was aware of the “Release Complete” message prior to submitting his first expert report (*Id.* at ex. 5, 54:9-13), yet he did not offer that infringement theory in his first expert report. He testified that ¶¶ 234 and 244 of his first expert report refer to the “Disconnect Message,” rather than the “Release Complete” message, of the Global System for Mobile Communications protocol. (*Id.* at ex. 5, 52:14-53:6)

4. Moreover, MobileMedia, in its opposition brief to Apple’s motion for partial summary judgment of non-infringement of the ‘075 patent, does not cite any evidence in the record for its argument regarding the “Release Complete” message. (*Id.* at ex. 3, 7-8)

5. Finally, ¶ 6 of Dr. Meldal’s Second Supplemental Expert Report is outside the scope of the supplementation that the court allowed during the November 21, 2012 teleconference. In the context of the teleconference, the court limited Dr. Meldal’s supplementation to MobileMedia’s timer theory of infringement for the ‘075 patent. (D.I. 497 at 6:15-7:16, 8:5-16, 12:17-13:9, 21:5-8)

6. **Conclusion.** For the foregoing reasons, the court precludes MobileMedia from offering at trial Dr. Meldal’s testimony regarding the “Release Complete” message

constituting the “rejection message” claimed in the ‘075 patent (*Id.* at ex. 4, ¶ 6).


United States District Judge